

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOYCE COLE

Plaintiff,

v.

//

CIVIL ACTION NO. 1:13CV8
(Judge Keeley)

HARRISON COUNTY SHERIFF'S DEPT.,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 91]

On January 17, 2013, the plaintiff, Joyce Cole ("Cole"), filed a complaint in which she alleged, among other things, that the Harrison County Sheriff's Department had entered her home without a search warrant. (Dkt. No. 1). On that same date, the Clerk of Court sent Cole a Notice of Deficient Pleading, the Court's § 1983 form complaint, and an application to proceed in forma pauperis with a Prisoner Trust Account Report. (Dkt. No. 3). On January 18, 2013, the Clerk of Court sent Cole a duplicate Notice of Deficient Pleading with an amended complaint form. (Dkt. No. 4). The Notice advised Cole that a failure to submit the forms within twenty-one days would result in dismissal of her case for failure to prosecute. (Dkt. No. 3).

Both Notices (dkt. nos. 3, 4) were sent by certified mail, return receipt requested, to the North Central Regional Jail ("NCRJ") in Greenwood, West Virginia, the return address on the

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 9]

envelope which enclosed Cole's initial pleading. (Dkt. No. 1-1). A NCRJ employee signed for the second Notice on January 22, 2013. (Dkt. No. 5). The first notice reached the NCRJ at a date unspecified. (Dkt. No. 6).

On July 23, 2013, Magistrate Judge Kaull entered an order ordering Cole to show cause within fourteen (14) days why her complaint should not be dismissed for failure to prosecute. The order explained to Cole that failure to timely show cause would result in the dismissal of this case without further notice. Cole never responded. On October 10, 2013, Magistrate Judge Kaull enter a Report and Recommendation ("R&R"), which noted Cole's failure to pay the required filing fee, move to proceed *in Forma Pauperis*, or to show cause. Consequently, Magistrate Judge Kaull's R&R recommended dismissal of the case without prejudice. The Clerk of Court mailed the R&R to Cole, but it was returned undeliverable as Cole is no longer at the NCRJ and no forwarding address was provided by Cole.

Consequently, finding no clear error, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 9), and **ORDERS** that this case be **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's active docket.

It is so **ORDERED**.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 9]

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of this order to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 23, 2015.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE